

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE:) 19-MD-2875(RBK-JS)
)
) Camden, NJ
VALSARTAN NDMA PRODUCTS) January 15, 2020
LIABILITY LITIGATION) 4:03 p.m.

TRANSCRIPT OF TELEPHONIC DISCOVERY CONFERENCE
BEFORE THE HONORABLE JOEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE

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Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

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Colloquy

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1 (The following was heard via telephone conference at
2 4:03 p.m.)

3 THE COURT: This is Judge Schneider. We're on the
4 record in the Valsartan MDL, Docket No. 19-2875.

5 Welcome back from the holiday. And let's get the
6 names of people on the phone, starting with plaintiff.

7 MR. SLATER: Good afternoon, Your Honor. Adam Slater
8 for plaintiffs.

9 MS. WHITELEY: Good afternoon, Your Honor. This is
10 Conlee Whiteley on behalf of plaintiffs.

11 MR. STANOCH: David Stanoch for the plaintiffs.

12 MR. WILLIAMSON: This is George Williamson on behalf
13 of the plaintiffs.

14 MR. PAREKH: This is Behram Parekh on behalf of
15 plaintiffs.

16 MS. HILTON: This is Layne Hilton on behalf of the
17 plaintiffs.

18 MR. NIGH: This is Daniel Nigh on behalf of the
19 plaintiffs.

20 THE COURT: Okay. It sounds like that's the
21 plaintiff's team. Who's on for the defendants?

22 MR. GOLDBERG: Good afternoon, Your Honor. This is
23 Seth Goldberg on behalf of the DHP parties, and the defendants.

24 MR. TRISCHLER: Good afternoon, Your Honor. Clem
25 Trischler for Mylan Pharmaceuticals.

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1 MS. LOCKARD: Victoria Lockard is here for TEVA, and
2 I believe Brian Rubenstein is on as well for TEVA.

3 MR. RUBENSTEIN: Yes. Good afternoon, Your Honor.
4 This is Brian on behalf of TEVA.

5 THE COURT: Anyone else?

6 MS. JOHNSON: Good afternoon, Your Honor. This is
7 Sarah Johnson on behalf of the Pharmacy and Retailer
8 defendants, including CVS and RiteAid.

9 THE COURT: Great.

10 MR. GOLDBERG: Your Honor, this is Seth Goldberg.
11 Because of some of the issues that are on the table today,
12 there are a few more lawyers on behalf of defendants on the
13 line. A few representatives of wholesalers.

14 THE COURT: No problem.

15 MR. GOLDBERG: Wholesaler (inaudible) supply chain.
16 And counsel for Legacy to address the Legacy issue. If you'd
17 like them to introduce themselves, they're -- they're on the
18 line as well.

19 THE COURT: Okay. Please -- please do. Let's get
20 the name of everyone on the line.

21 MR. GOEPPINGER: Good afternoon, Your Honor. Jeff
22 Goeppinger on behalf of AmeriSourceBergan.

23 MR. ST. ONGE: Britton St. Onge on behalf of Legacy
24 Pharmaceutical Packaging.

25 THE COURT: Anyone else? Okay.

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1 MR. GOLDBERG: There are folks that, Your Honor --
2 Your Honor, there are, they probably don't know (inaudible) and
3 everybody else, you have to hit star one to unmute.

4 MS. NORRIS: Thank you.

5 UNIDENTIFIED COUNSEL: Good afternoon, Your Honor.

6 MS. NORRIS: Thank you for that instruction. This is
7 Ellie Norris and Alexi Davis (phonetic) on behalf of McCutchen
8 (phonetic).

9 THE COURT: Well you might as have opened the
10 floodgates there, Mr. Goldberg.

11 MR. KAPLAN: Good afternoon, Your Honor. One more.
12 This is Andrew Kaplan on behalf of Cardinal Health.

13 MR. SELLINGER: Good afternoon, Your Honor. This is
14 David Sellinger on behalf of Walmart.

15 MR. JANOW: Your Honor, this is Jonathan Janow on
16 behalf of Albertsons.

17 MR. KNEPPER: Your Honor, Matthew Knepper on behalf
18 of Express Scripts.

19 MS. HEINZ: And Jessica Heinz on behalf of Auribindo
20 USA and Auro..

21 MS. RICHER: Good afternoon, Your Honor. This is
22 Kristen Richer also on behalf of CVS and RiteAid.

23 THE COURT: Okay. Let me jump in here before we get
24 even more names.

25 I received the letters from plaintiff and defendant.

1 Thank you very much. We'll go down each of those issues and
2 discuss them, and any other issues the parties want to address.
3 Before we get into the issues in the letter, I just have one
4 question that perhaps someone can help me with. Like me, you
5 probably got an order from the Judicial Panel, which had the
6 caption of the Invokana case and the Valsartan MDL's on it.

7 And I have to confess, I'm terribly confused by what
8 that order says and what it means as regards our case. If
9 anyone on the phone knows what I'm talking about, the order,
10 and have an explanation of that order, what it means, boy, I
11 would appreciate some explanation.

12 MR. STANOCH: Your Honor, this is David Stanoch for
13 plaintiffs. Hearing nothing from all the esteemed colleagues.
14 I looked at this order very briefly, and I believe, and I may
15 be wrong, but I believe that was a case that was -- that
16 involved both Invokana and Valsartan. And I believe the JP
17 have now severed the claims as to Valsartan and Invokana from
18 another, and then transferred them accordingly.

19 I could be wrong, but that was my very quick read on
20 the phone when I'm coming back from a plane -- on a plane from
21 vacation.

22 MS. RICHER: Yes, Your Honor. This is Kristen
23 Richer. I can confirm that that's correct. I'm familiar with
24 that case in another context, and the complaint as original
25 filed identifies the (inaudible). And they were severed

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1 (inaudible).

2 THE COURT: So that order only concerns one case?

3 MR. STANOCH: Yes. Yes.

4 THE COURT: Well thank you for the clarification.

5 That's helpful. All right. Let's now get to the issues in the
6 letters, and I think it's perfectly fine to go in the order
7 that is in the letter. But maybe -- let me take the -- let me
8 just go out of order for one moment.

9 And let's discuss the Legacy issue, because I think
10 that's pretty straightforward. You saw my order terminating
11 without prejudice the Legacy motion. I spoke to Judge Kugler
12 about this. He confirmed that all motions are stayed. That's
13 why I entered my order. Legacy, if you're on the phone, if you
14 want to make a special application to Judge Kugler about why
15 there's special circumstances, that Legacy is in such a unique
16 position that it should be permitted to file its motion at this
17 point, you could -- why don't you file an application with
18 Judge Kugler.

19 It will be put on the agenda for the conference at
20 the end of the week, and you could argue it before Judge
21 Kugler. Your client hasn't been in the case apparently since
22 the beginning. Judge Kugler made it absolutely clear that
23 there's going to come a time in this case where he hears the
24 parties' dispositive motions.

25 But as far as he's concerned, in terms of case

1 management, that time isn't ripe yet. So that's why the motion
2 was terminated for Legacy, just like any dispositive motion
3 that's going to be filed. But, again, to repeat, if you think
4 Legacy is in such a unique position, make an application to
5 Judge Kugler, it will be put on the agenda for the conference
6 at the end of the month, and you can argue it in person at that
7 time.

8 So does Legacy's counsel want to be heard on that?

9 MR. ST. ONGE: No, I -- yes. Thank you, Judge. I
10 think that makes sense, and I understand that won't be the
11 actual motion, that's just an application for leave to file the
12 -- so I guess re-file the motion and have it heard. Should I
13 make that application -- file that in the MDL and then
14 cross-file that original action as well?

15 And when would you like that to be filed by?

16 THE COURT: I think that makes sense. I don't think
17 you have to file a formal motion. You could do it by letter
18 brief. I would address it to Judge Kugler. If you could copy
19 me on it, that would be helpful. I'll make sure it gets on the
20 agenda for the conference at the end of the month.

21 In terms of when you should file it, I would do it as
22 soon as I can, counsel, so that Judge Kugler has time to
23 consider it. And anybody that wants to be heard with regard to
24 that motion can chime in.

25 MR. ST. ONGE: Just one quick second, Judge. This is

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1 Britton for Legacy again. A letter brief, and that would be
2 filed on the Docket, though, correct?

3 THE COURT: Yes. Absolutely.

4 MR. ST. ONGE: And would like me to send you a copy
5 -- okay. You said a copy I wasn't sure what that meant.

6 THE COURT: Well you're going to mail it to Judge
7 Kugler. Mail a copy to me also. Between your mailing and the
8 Docket, I won't miss it.

9 MR. ST. ONGE: Okay. Thank you, Judge. I will do
10 that.

11 THE COURT: All right. So that takes care of the
12 Legacy issue. The first issue in the letters is the expansion
13 of the MDL. Let me -- let me -- I'll open it up for discussion
14 in a moment. But let me just tell you what I'm thinking about
15 this. I do agree that the expansion of the MDL raises some
16 really sticky issues about how to handle it.

17 I told Judge Kugler that I thought it's best that we
18 not decide any of those issues during this phone call, but will
19 put it on the agenda for the afternoon conference at the end of
20 the month when we meet with Judge Kugler.

21 Because I think some of these issues really have big
22 implications for how this case is going to proceed. That being
23 said, with the understanding that we're not going to decide
24 anything on this phone call, I think it would be helpful to
25 have a discussion about what the issues are, and the different

1 positions of the parties, so that we can at least be alerted to
2 what's -- what's coming.

3 Plaintiff -- let me start with plaintiff. Mr.
4 Slater, what are plaintiffs suggesting for how we incorporate
5 the two new sartan's into this case, given that, of course, the
6 master complaints only concern valsartan we've -- the document
7 requests and the search terms that we've been dealing with were
8 of course only directed to valsartan.

9 Have plaintiffs crystalized how they want to approach
10 this issue?

11 MR. SLATER: Thank you, Judge. I think that starting
12 with a couple of things that I think are the pressing issues
13 that we're certainly going to want to address, and I can talk
14 (inaudible). One thing we need quickly (inaudible) direct
15 filing. I just want to kind of put that out there and if
16 anybody on the phone (inaudible) everybody's attention because
17 people who just filed cases and we would like people
18 (inaudible) lack of ability to file (inaudible) pursuant to
19 victims who have filed if we can just tweak it a little to bit
20 to (inaudible) and Losartan cases to that, so that we don't
21 have people filing cases all over the country and having them
22 sent over.

23 THE COURT: All right. Let's -- let's deal with --

24 MR. SLATER: (Inaudible).

25 THE COURT: All right. Let's deal with just that

1 issue. Do the defendants have an objection to that? To just
2 amending, or revising, or supplementing the existing direct
3 filing order to include the two new sartan's? Because, if not,
4 I would just ask you to send me a form order, Mr. Slater, and
5 if Mr. -- if Judge Kugler's not in the office, I'll sign it.
6 So is there going to be any objection?

7 MS. LOCKARD: Your Honor, it's Victoria Lockard here
8 from TEVA. Since we all worked on the initial order for the
9 direct filing. We can work with Mr. Slater on (inaudible). I
10 don't think we'll have any objection, but I just want the
11 opportunity to canvas the rest of the defense group. But --
12 and, you know, so far we haven't heard any objection to that
13 and we finally stated in the letter that was provided to the
14 Court. So --

15 THE COURT: Sounds great.

16 MS. LOCKARD: We can handle it.

17 THE COURT: Okay. Sounds great to me. Mr. Slater?

18 MR. SLATER: (Inaudible).

19 THE COURT: Just coordinate with counsel. Send it to
20 the Court. If Judge Kugler's not in the office at the time,
21 I'll sign it and get that done. Okay.

22 MR. SLATER: Thank you, Your Honor. And just sort of
23 on Ms. Lockard's question. I -- you know, if she could send it
24 over today, I'll (inaudible) look at the option by the end of
25 the week. Because we're getting calls from people asking what

1 to do. So if she could do that quickly, I'll make sure. All
2 right. In terms of the overall litigation, Your Honor, I had a
3 good talk with Jeff the other day, with Mr. Goldberg the other
4 day, and I think we both were saying that we needed to talk to
5 our groups to figure out the details, and also get guidance
6 Your Honor and Judge Kugler about your thoughts.

7 But it certainly seems most efficient to try to use
8 the terms that have been negotiated and ruled on, to the extent
9 they have been, as much as possible for losartan and
10 irbesartan, and then figure out if there are any unique issues
11 that would cause those documents to be changed in any
12 particular way.

13 And I think everybody should be really thinking about
14 that and so on -- that -- we think though, we haven't all
15 talked on our side, but there's certainly a likelihood of new
16 master pleadings regarding the two drugs, and there may be some
17 others, we don't, on the plaintiffs' side, as to whether or not
18 they should be folded in together.

19 But I know the early discussion is that we can keep
20 this as clean as possible, should have master pleadings for
21 each of the drugs, so that the -- you know, it might -- a good
22 separation on the master pleading (inaudible). As far as -- as
23 Your Honor said, we've done so much work on the discovery
24 requests that we feel that we should start with what we find,
25 and then we should figure out how those documents should be

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1 amended, and then if that can't be worked out, obviously, bring
2 those specific issues to Your Honor.

3 And then there may be some that we're not aware of.
4 You know, there's some (inaudible) there may be some different
5 issues having to do with these drugs, and then the definitions
6 would have a terminology and things like that. So, obviously,
7 the search terms would be prime examples, Your Honor. And
8 obviously something that we'll have to go through and get done,
9 and especially the ones that are going to be specifically
10 patents that are involved with the irbesartan and losartan
11 issue.

12 So that's really our (inaudible) for the case here.
13 And we agree that we can continue to talk on our separate
14 sides, and then continue to talk between us now and before we
15 get to Court January 28th, so at least we can identify any
16 issue that might be, you know, primary type issues.

17 The other issue for the plaintiff is that we've
18 gotten a couple of inquiries from people who now have
19 irbesartan or losartan cases in advance. What we intend to do
20 with the plaintiff's leadership structure, and we have told
21 them we thought what made the most sense was to address that
22 all at once, because there may be that one or two people have
23 reached out now, but there could be others that over the next
24 few weeks will (inaudible) case and want to be involved.

25 So I thought we could perhaps put something on the

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1 Docket on ECF stating that if people are interested in joining
2 our leadership structure specific to those new drugs, that we
3 can talk to them and try to come up with what makes sense.
4 Some of our conditional PLT (phonetic) spots are certainly, you
5 know (inaudible) probably be a reasonable target for discussion
6 and probably the formation of a committee to focus on how we're
7 going to get up to speed with the new drugs.

8 I think that's a pretty good overview of where we are
9 on our side, unless anybody wants to (inaudible) that.

10 THE COURT: Mr. Goldberg, it would be helpful to have
11 the 10,000 foot general thoughts if you know them of the
12 defendants.

13 MR. GOLDBERG: Sir, I can (inaudible) them. You know,
14 I think we -- I think we are still trying to just get
15 everyone's input at all levels of the supply chain. And Mr.
16 Slater's correct, we did have a, you know, productive
17 conversation. And the parties have agreed to get together next
18 week to talk about these things.

19 I think as a -- as a general matter, you know, the
20 three drugs really do have differences in terms of, first, from
21 a factual standpoint in terms of manufacturing processes, et
22 cetera, from a regulatory profile. I mean, he just said
23 recalls for valsartan are vastly different than the recalls for
24 irbesartan and losartan. There are different defendants that
25 manufacture these drugs.

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1 Some who manufacture valsartan don't manufacture
2 losartan and irbesartan. So, you know, at a minimum it's going
3 to create some proportionality issues when you take valsartan,
4 which is the broadest of -- of recalls, and -- and if they
5 tried to transpose valsartan onto irbesartan and losartan. So,
6 you know, those are things hopefully we can work out with
7 plaintiffs when they're talking about some of the discovery.

8 Obviously, we've spent a lot of time on specific
9 language in document requests. Those kind of things, you know,
10 you don't think you'd want to revisit those kinds of things,
11 but it's more on some requests it's inapplicable because of the
12 differences in the drugs in some areas, you know, not worth
13 going down the road on in terms of irbesartan and losartan.

14 I think we are really trying to think through some
15 more of the -- of the bigger picture issues. Why, or do you
16 put these drugs on different tracks? Now is this -- is this a
17 time to think about whether, you know, there's a -- the Court
18 had talked about the economic loss claims. You're maybe
19 proceeding, or with a personal injury claim, or there -- is
20 this a time to think about, one, should I take the one set of
21 claims going ahead of the other?

22 You know, if you want to proceed on valsartan and you
23 push the other -- the other cases and the other drugs, to use
24 Mr. Slater's phrase from the other day, to have those lag
25 behind. Well that -- that may create some efficiencies, but it

1 also may create some inefficiencies at this point in time in
2 terms of collecting information.

3 These are things that I think we want to, you know,
4 these higher -- these higher level issues about management we
5 want to discuss with plaintiffs and -- and do think we'll be
6 able to come to the Court at the end of the month with some
7 good suggestions about them.

8 THE COURT: That sounds very logical and sensical
9 (sic). And I think you agree with me that these issues are so
10 important and so overreaching that we should give the parties
11 time to talk them out. We're not going to decide anything
12 today. And we'll put them on the agenda for the afternoon
13 conference at the end of the month.

14 But let me just make two general comments, and see if
15 you agree with them. One is, Mr. Slater, I think your idea
16 about opening up leadership to have people who are
17 representative of this losartan and irbesartan issue, is an
18 excellent one. I know Judge Kugler would encourage that, and I
19 think that's a great idea to make sure that leadership
20 structure of the group is representative of the entire group.

21 But the second general point I would make is, there's
22 pleading issues we have to deal with, and there's discovery
23 issues we have to deal with. I think it makes sense to try and
24 deal with the pleading issues first. Let's get them sorted out
25 and organized, and then, you know, we can deal with the

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1 discovery issues with regard to these two new sartan's after we
2 get the other fact sheets and discovery requests out of the
3 way, which I hope we can do by the end of the month.

4 And then after we get that out of the way, revisit
5 the -- the two new sartan issues. So I do think it makes sense
6 to separate the discussion when you talk about these issues
7 into case management, pleading issues, and separately deal with
8 the discovery issues, which I would put on the back burner for
9 now.

10 Okay.

11 UNIDENTIFIED COUNSEL: Thanks, Judge. We're
12 (inaudible).

13 THE COURT: Okay. So we'll -- we'll be prepared to
14 -- you'll discuss these issues, there's some very important
15 issues obviously. And we'll discuss them the afternoon at the
16 end of the month conference.

17 Second issue on the letters is downstream defendant
18 discovery. According to the chronology that I keep, our
19 expectation and hope by the conference on the twenty-eighth was
20 we were going to finalize all defendant fact sheets, and if
21 there were any issues regarding the non-manufacturing
22 defendants fact sheets, we were going to address them, brief
23 them, and decide them by the end of the month.

24 Where are we on the downstream defendant discovery
25 issues?

1 MS. WHITELEY: Your Honor, this is Conlee Whiteley.
2 I can address the discovery request issues. We've been having
3 meet and confers. I think we've basically started (inaudible
4 4:28:21) towards the end of December on the 18th with Ms.
5 Johnson, and we had a follow up call with her.

6 We've made a good bit of progress there. We've
7 exchanged -- we're all working on the short document, and we've
8 added a little bit of that, and we explained to her that we
9 needed to get some terminology confirmed with our expert.
10 And then turn it back around to her once we agree, or so that
11 the short form of those, the topics, the terminology. And
12 we're going to put that back into our formal discovery request.

13 We are on a similar trajectory with the wholesaler
14 defendants, but just a little bit behind. We had -- Mr. Slater
15 and Ms. Davis had a call on Christmas Eve to get the process
16 started. We were going to have another call yesterday, but we
17 ended up -- we just received our draft from them of requests
18 for production that they believe that would be appropriate.
19 We're reviewing those.

20 We also last night reviewed some additional
21 information from Ms. Davis about scheduling, and other matters
22 which she wants to talk about in terms of discovery that she
23 wants from plaintiffs outside of the plaintiff fact sheet, and
24 scheduling for class certification, and other things like that.
25 So we have asked for a follow up call to discuss everything in

1 the case. Some of it may not need to be discussed right away,
2 but we'll get everybody caught up and work through those issues
3 on Friday.

4 MS. JOHNSON: And --

5 THE COURT: Go ahead --

6 MS. JOHNSON: Your Honor, this is Sarah Johnson on
7 behalf of various retailer and pharmacy defendants. And I go
8 to what Ms. Whiteley said regarding her efforts. You know, as
9 you may recall, we had that conference by phone on the
10 eighteenth and there were some concerns that we were going to
11 be on a tight time line following the holidays.

12 So we're (inaudible 4:30:20) we got together and we
13 -- we did a lot of work over the holidays to go back to our
14 respective entities and figure out what we thought we could
15 reasonably provide in keeping with the Court's guidance at that
16 last conference.

17 And as Ms. Whiteley mentioned we prepared a draft
18 (inaudible 4:30:42), and then had a follow up conference about
19 those, and we're waiting for the edit. So we're -- we are
20 mindful of the Court's --

21 THE COURT: Target.

22 MS. JOHNSON: -- schedule for -- for the -- yeah, for
23 the target to finalize and (inaudible 4:30:58) the end. We're
24 continuing to talk, and next step, we'll see what plaintiffs
25 come back with on those requests.

Colloquy

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1 THE COURT: Okay. So it sounds like with regard to
2 the retailer pharmacy parties we should be in a position to
3 address any disputes on the twenty-eighth.

4 MS. WHITELEY: Yes, Your Honor.

5 MS. JOHNSON: We're hopeful that that's where we're
6 going to be, Your Honor.

7 THE COURT: Okay. To give both sides peace of mind,
8 and I recall a reference in one of the letters to this, I
9 wholeheartedly agree that this set of requests is without
10 prejudice to serve another request in the future, or a
11 supplemental request.

12 This doesn't mean that this is the end of the road
13 with regard to discovery. So if you're concerned, plaintiffs,
14 that if you don't get something included now you'll never get
15 it, that's not the case. If you need something down the line,
16 you'll get it. If it's relevant in the good cause you'll get
17 it. So maybe that will help the parties if the -- to focus on,
18 you know, what they genuinely need at this point, because they
19 don't have to be concerned that they're waiving anything.

20 Do you think we'll be in a position to also address
21 the wholesaler defendants document requests by the
22 twenty-eighth?

23 MS. WHITELEY: Your Honor, this is Conlee Whiteley
24 again. I believe that we will be. I'm hoping we'll make a
25 good bit of progress on Friday, and that is certainly our goal.

1 THE COURT: Okay. Great. The third issue, I don't
2 really understand why this is on the agenda. Manufacturer
3 defendant fact sheets. So what group of defendants are we
4 talking about here?

5 MR. NIGH: Your Honor, I can address -- this is
6 Daniel Nigh. The fact sheets go to the specific case where we
7 just were discussing were the overall set of general discovery.
8 And so if you'll recall, we're completing individual plaintiff
9 fact sheets. This is discovery aimed at understanding
10 defendant's information that they have for individual cases in
11 response to the fact sheets.

12 So it's the same type of thing we did in Benicar, so
13 we have plaintiff fact sheets and defendant fact sheets.
14 That's what we've been working on. We had had a joint
15 (inaudible 4:33:29) fact sheet where everybody would, you know,
16 our hope was to have everybody in the supply chain work on it
17 together. But with -- but with Your Honor's guidance we
18 understand that we're splitting that apart. We have done that
19 to where it's (inaudible 4:33:51) that each person in the
20 chain, and my hope is to have it to where we can -- we can send
21 out the -- our draft by the end of the week, so that we can
22 have a discussion there and see whatever differences that we
23 have and adjust those at the end of the month.

24 THE COURT: Mr. Nigh, I have to confess, I'm
25 confused. I -- I don't know when -- we -- I mean all -- most

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1 of the time up until now was on the API manufacturers and the
2 final product people. Who are the plaintiffs referring to when
3 they talk about manufacturer defendant fact sheets?

4 I -- I don't understand.

5 MR. NIGH: Well it shouldn't just be manufacturers'
6 fact sheets, it should really be called defense fact sheets.

7 THE COURT: So I --

8 UNIDENTIFIED COUNSEL: That goes to everybody in
9 (inaudible 4:34:49)

10 THE COURT: So --

11 UNIDENTIFIED COUNSEL: (inaudible 4:34:50) one
12 second?

13 THE COURT: Yeah, I don't --

14 UNIDENTIFIED COUNSEL: (Inaudible 4:34:52)
15 demonstrate it? Judge, the way this came up I think was just
16 (inaudible 4:34:58) Mr. Goldberg (inaudible) and when we had
17 our call the other day, he told me he was going to put an issue
18 on the agenda which would -- to ask the Court to -- to not
19 require defense fact sheets to be completed by the
20 manufacturers (inaudible 4:35:13) API and finish those
21 manufacturers. So the way it was presented to me is that those
22 -- that group of defendants did not want to do a defense fact
23 sheet, despite the fact that we've always understood them to be
24 done to identify things that would impact on the case
25 specifically identifying lot batches, whether the batch was

1 contaminated, at what level, et cetera.

2 Contact with the doctors involved in the care of the
3 plaintiff, et cetera. Those types of issues. And Mr. Goldberg
4 said they didn't think they should have to do a fact sheet
5 anymore in light of the general discovery.

6 THE COURT: Oh.

7 UNIDENTIFIED COUNSEL: That's my understanding of why
8 that was placed on the agenda today. That (inaudible 4:35:55)
9 --

10 THE COURT: Okay. So we'll hear from Mr. Goldberg
11 right now. But so I -- I guess what I'm understanding now --
12 now it's -- now it's clarified a little bit. Is it defendants'
13 position that since they're responding to the requests for
14 production that they don't have to also respond to these fact
15 sheets?

16 MR. GOLDBERG: Yeah, that's part of the position,
17 Your Honor. And the fact sheet issue started really before the
18 Court spent, you know, he many months this fall going through
19 all of the document requests.

20 And (inaudible 4:36:40) document requests. Now that
21 we have the (inaudible 4:36:43) that are, you know, Court
22 approved document requests that cover the waterfront with
23 respect to the kind of information that had previously been
24 proposed for the defendant (inaudible 4:36:56). We -- we think
25 it's unnecessary to do. So that's -- that's part of the -- the

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1 mediation hearing. So we just wanted that clarification,
2 because the -- because we knew January 28th was coming up, and
3 there was this motion that defendant fact sheets needed to be
4 completed.

5 The second -- you know, the second issue is that the
6 kind of information that plaintiff might ask -- that might ask
7 our defendants to provide in a fact sheet, and, namely, it --
8 it really shouldn't be about the identification of a lot or
9 batch that a specific plaintiff might have -- the drug that a
10 specific plaintiff might have consumed came from.

11 That information is not in the possession, or not
12 able to be provided by the manufacturer defendant. And so it
13 -- it -- that kind of request in a defendant fact sheet is
14 really unnecessary as to the manufacturer defendant. And so
15 for those two reasons, we thought it made sense to just have
16 the clarity that at the manufacturer level of the supply chain,
17 a defendant fact sheet is not necessary.

18 THE COURT: Is there -- well, I mean, it's clearly
19 the case, it's unquestionably the case that if there is going
20 to be a fact sheet for the defendants, it can't duplicate
21 what's in the request for production. That makes no sense. So
22 is there a circulating draft of whatever fact sheet the
23 plaintiffs want the manufacturer defendants to respond to?

24 MR. GOLDBERG: You know, Your Honor, this is -- this
25 is Seth Goldberg. Again, this -- there have been some drafts

1 circulated. And the last draft that we provided was back in
2 October before Your Honor really dug in on the document
3 requests.

4 THE COURT: Right.

5 MR. GOLDBERG: And at least with respect to the API
6 and (inaudible 4:39:11) manufacturers there are really only
7 three or four areas. There's been produced the lot and batch
8 with respect to a specific plaintiff. Produced the testing in
9 with respect to that lot and batch, and produced communications
10 with the plaintiff's physicians (inaudible 4:39:32).

11 And the first two are certainly covered by the
12 document request. I'm not sure about physician communications,
13 I think they are covered by the document request. And so every
14 one they've asked for is stuff we've already put into the
15 document request.

16 THE COURT: Mr. Slater, wouldn't it make sense for
17 the -- now that the Court has ruled on the document requests,
18 and there can be no legitimate dispute that the fact sheets
19 shouldn't duplicate what the defendants, the manufacturing
20 defendants have to answer in the request for production,
21 wouldn't it make sense to go back to the draft and just clean
22 it up?

23 And if you think there's anything that's not covered
24 by the document requests, show it to the -- Mr. Goldberg and
25 his group, and then if there's disputes, we'll deal with it.

1 But I don't think it -- it's probably not wise to work from a
2 draft from October, since so much work has been done since
3 October that would moot out, according to Mr. Goldberg, all of
4 the proposed fact sheets.

5 MR. SLATER: We agree. And we'll (inaudible 4:41:03)
6 that what happened is, we have certain integrated defense fact
7 sheet for the defendants to pull out the parts that apply to
8 them, and then as we got into the document that they would
9 agreed to just push that issue to January, because, you know,
10 as you said, we're dealing with some other issues, let's just
11 take care of that next.

12 As Mr. Nigh says, we agreed fully with what he said.
13 We broke the fact sheet down and what (inaudible 4:41:30) going
14 to get them to the defendants by the end of the week.

15 THE COURT: Okay.

16 MR. SLATER: And I think once -- once if you actually
17 view them, that they'll see --

18 THE COURT: Okay.

19 MR. SLATER: -- that it's what we (inaudible 4:41:39)
20 agreed is narrowed to the plaintiffs. So that we originally
21 had put this together with all these levels (inaudible
22 4:41:47), and any fact sheets can't alone identify whether a
23 plaintiff took a contaminated pill.

24 But when we take the information from the retailer
25 going backwards up the distribution chain from, you know, okay,

1 they took this NBC (phonetic) code, this is what the coding for
2 the retail level going back to the manufacturer, then the
3 manufacturer can say, okay, now we know that James Nick
4 (phonetic) took a pill that (inaudible 4:42:13) identification
5 number. And we go back, we know that's a contaminated batch,
6 or the contamination level if there's (inaudible 4:42:20), so
7 there's information the manufacturers will need from these
8 downstream defendants in order to be able to put it together.

9 So there's going to be a work where we're getting the
10 information from one level, and go to the other level, and
11 ultimately be able to know our plaintiff-by-plaintiff level,
12 for example, in that individual cancer case which code they
13 took, going back up the chain to the manufacturer for that
14 specific lot or batch confirmed to be contaminated, et cetera.

15 And then the (inaudible 4:42:50) physician
16 (inaudible) document. So we're (inaudible 4:42:55), Your
17 Honor. It's not just a duplicate document, it's a document to
18 make sure we have the specific information for a specific
19 plaintiff so that the specific facts are laid out connections.

20 THE COURT: Okay. So if I understand it right,
21 plaintiffs are going to serve by Friday a revised proposed fact
22 sheet. Defendant manufacturers will look at that. I hope
23 there's no objection, but I live in the real world. And then
24 with regard to the disputes, we can address them on the
25 twenty-eighth. Maybe we won't decide them, but we'll at least

1 address them on the twenty-eighth.

2 But until Mr. Goldberg and his group gets the revised
3 fact sheets, you know, it's pointless I think to talk about the
4 issue, because we don't know what it is that plaintiffs want.

5 UNIDENTIFIED COUNSEL: We agree on (inaudible
6 4:43:58).

7 THE COURT: All right. So, Mr. Goldberg, you'll get
8 that revised, cleaned up -- my words, my words -- cleaned up
9 fact sheet. By Friday you'll have time to discuss it and any
10 disputes, which presumably there will be, we'll discuss it on
11 the twenty-eighth.

12 MR. GOLDBERG: Sounds good.

13 THE COURT: All right. That takes us to what's a
14 really interesting issue the recalled product issue. Just to
15 put your mind at ease, we're not going to decide this issue
16 today. There's too much involved, there's too much
17 consideration. But I'm glad you raised it, because it's a big
18 issue.

19 It's a big enough issue, it seems to me that it
20 deserves a motion. But here's the -- here's the concern,
21 problem, what have you, that I see. Again, I'm not making any
22 ruling, but the odds that every single recalled pill has to be
23 preserved, at least commonsense wise, doesn't sound reasonable.

24 So there has to be an identification of some type of
25 representative group, or sample of recalled pills that are

1 preserved. But even though we've been trying from the very
2 beginning in this case to find out the volumes involved, what
3 is a lot, what is batch, no one has been able to identify that
4 thus far. So, I mean, does anyone have any idea if we're
5 talking about a thousand pills, a million pills, a hundred
6 million pills?

7 And doesn't that help frame the issue ultimately
8 about what has to be preserved, if anything?

9 MS. HILTON: Your Honor, if I may? Layne Hilton on
10 behalf of the plaintiffs. Just to address Your Honor's first
11 point about the practicality of the defendants keeping or
12 preserving recalled pills. They're actually the part of the
13 FDA recall efforts. They're actually under FDA obligation for
14 every recalled pill they receive in their possession, they have
15 to quarantine it.

16 So they're already doing it, they're already keeping
17 the pills for (inaudible 4:46:47) for obvious issues under the
18 FDA. And so all we're asking is that they don't then destroy
19 the pills, because they're already keeping them, they're
20 already quarantining them. Defendants have indicated that they
21 are quarantining and keeping pursuant to a litigation hold.

22 THE COURT: Right.

23 MS. HILTON: Defendant Mylan has indicated that they
24 are quarantining product. So in the sense that the pills are
25 already within their possession that they've received from

1 various customers or entities, they have to keep it right now.
2 And then they have to get affirmative authority from the FDA to
3 destroy it.

4 So plaintiffs are of the belief that our request to
5 preserve pills is actually, you know, (inaudible 4:47:32) is
6 already requiring them to do.

7 THE COURT: Yeah, but that --

8 MS. HILTON: -- they are (inaudible 4:47:37).

9 THE COURT: Yeah, but I'm not sure that really is a
10 complete summary of the record, because -- we'll hear from Mr.
11 Goldberg, but Mr. Goldberg's letter says that they're mandated
12 in some instances to destroy pills. And that was the basis of
13 their argument about the privacy and, you know, primary
14 jurisdiction, et cetera, et cetera.

15 What I'm thinking of, for example, suppose I said to
16 plaintiffs, plaintiffs file a motion about what you want, and
17 you're going to say, we want plaintiffs to quarantine and not
18 destroy every single recalled pill. And I would say to
19 plaintiffs, what's the volume that we're talking about? Where
20 are they located? How are they stored?

21 I assume right now you can't give me the answer to
22 that question.

23 MS. HILTON: No, Your Honor. We can't. I mean,
24 (inaudible 4:48:44) part of what our (inaudible 4:48:45) was
25 (inaudible).

1 THE COURT: But don't we -- yeah, don't we need to
2 know that? Don't we need to know that to frame an answer to
3 this question like what -- isn't what you want is a
4 representative sample of the recalled product? You can't want
5 ten million pills, you want a representative sample, right?

6 And you can't get a representative sample unless you
7 know what universe is out there, right? So doesn't it make
8 sense to try and find out what that universe is?

9 MS. HILTON: Correct, Your Honor. I think that's,
10 you know, sort of where we landed in our letter (inaudible
11 4:49:31). Of course, our position is that -- that much of this
12 information as to who is keeping the -- the recalled product in
13 the event that it is a the third-party, you know, the volume,
14 whether product was already destroyed, when it was destroyed,
15 who destroyed it.

16 You know, we were just thinking that we were supposed
17 to receive that in core discovery. We haven't. To some extent
18 we received some documentation regarding the ongoing recalls
19 and -- and information about who was taking the pills, but we
20 don't -- there's a lot of it that, you know, we don't have.

21 We don't have any certificates of destruction,
22 destruction has already happened. And so I think, you know,
23 where we've sort of landed is that we're going to at least
24 require prior to potentially briefing this this issue, we're
25 going to require some limited set of discovery to sort of

1 understand, as Your Honor said, that the scope of the universe
2 of what a (inaudible 4:50:26) so we can then, you know, better
3 identify what it is, you know, we really would like preserved.

4 THE COURT: Mr. Goldberg, help us help you. If -- if
5 the ultimate goal is to, and I'm not ruling, but, I mean,
6 commonsense tells me that not every last pill has to be
7 preserved, but a representative sample would have to be
8 preserved. How can plaintiff go about identifying what a
9 representative sample is?

10 MR. GOLDBERG: Your Honor, I think you're right about
11 the point that not every pill can be preserved. Or I think
12 there's -- you know, there are cross-questions, there are
13 safety questions about, you know, a recalled drug getting back
14 into their supply.

15 You know, we -- we as a group talked about the
16 information that's been requested by plaintiffs. And I think,
17 you know, by in large we can be comfortable providing that. I
18 think the -- the issue therein is -- is, you know, the
19 situation is we've provided that information is one thing, but
20 the way this has been positioned is that, you know, to the
21 extent there are pills that have been destroyed pursuant to
22 communication from the FDA or a recall plan, that that is
23 somehow (inaudible 4:52:02) of evidence.

24 And now, you know, in our view that the manufacturers
25 who are following the directives of the FDA are not holding the

1 evidence. And that's sort of, you know, getting to a sample
2 and making sure that there are samples available is -- is
3 potentially something that we could through -- through
4 production of this information (inaudible 4:52:31) that we can
5 do that.

6 There is the notion that there had been spoilation
7 has been, you know, that -- that raises a specter that, you
8 know, we don't think is warranted at this point. And so that's
9 one of the reasons we haven't been able to reach an agreement
10 on this issue.

11 THE COURT: Well isn't the -- doesn't the issue of
12 whether spoilation occurred in the past put the cart before the
13 horse? I mean, we'll deal with that issue down the road. But
14 I think what plaintiff is concerned about is destruction of
15 product in the future.

16 And if the Court ultimately has to decide that issue,
17 I don't see how it can decide that issue unless we know the
18 universe of what we're talking about.

19 MR. GOLDBERG: Yeah, I think that's a -- I think
20 that's a fair point. I mean, I think, you know, that there is
21 that question about what we do with drugs that are -- that, you
22 know, with the drugs that are still in the possession of the
23 manufacturers that have been, you know -- drugs that have been
24 returned upstream, so to speak, by the -- by the retailers and
25 wholesalers, or from consumers, what you do with that at this

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1 point.

2 But -- but the notion, what has happened and has
3 happened pursuant to FDA directive, we're just concerned that
4 that that shouldn't be viewed as spoliation since we're doing
5 what the FDA has approved us to do. And I don't know that, you
6 know, each defendant's going to be in a different place on
7 this.

8 But I agree with you that, you know, what we do going
9 forward is something that we can work with the plaintiffs on
10 and -- and, you know, possibly a good starting point are these
11 requests for information that they've put in the agenda
12 submission.

13 THE COURT: So, Ms. Hilton, does it make sense to you
14 to continue your discussions with defendants to get your arms
15 around what presently exists? And then, I mean, are you really
16 going to disagree with the notion that not every pill has to be
17 preserved, but what you're looking for is a representative
18 sampling?

19 MS. HILTON: Yes, Your Honor. I think we can work
20 with defendants on -- on sort of identifying a list of
21 discovery -- limited discovery on this issue. And, you know,
22 without -- I don't want to speak out of turn, we can come to
23 some sort of agreement on -- on, you know, potentially a
24 representative universe of pills.

25 And so I think we can work with defendants. I think

1 the issue is that, you know, right now we just are sort of
2 operating in a vacuum, and we don't have a lot of the documents
3 of what happened after defendants received the recalled product
4 and (inaudible 4:55:53). So I think that, you know, (inaudible
5 4:55:57) to get more information about what then happened after
6 they received the recalled product as a third-party (inaudible
7 4:56:05) received the recalled product. And then, you know, we
8 can come to some sort of hopefully agreeable conclusion on what
9 we want to be preserved.

10 THE COURT: I don't think this has to be formal
11 interrogatories or document requests. It seems to me that you
12 can get this information by informal discussions with, you
13 know, defense counsel over the phone. And then at the
14 appropriate time, I'll say file your motion if you can't agree
15 on what has to be preserved. We'll deal with the spoliation if
16 there is one down the road.

17 That's not the immediate thing. I think the more
18 pressing issue is, going forward what has to be preserved. So
19 why don't plaintiff continue their discussions with defendant
20 so that you have enough information, if there is a dispute and
21 you have to file a motion asking the Court to order the
22 defendants to preserve pills, you can talk intelligently about
23 what precisely is you're asking be preserved, because the Court
24 wants to know how much, where it is, what's this going to cost,
25 et cetera, et cetera.

1 MS. HILTON: I think that sounds reasonable, Your
2 Honor. One thing I'll just (inaudible 4:57:33). Do you think
3 that we can -- we can perhaps get a lot of this information
4 informally from conversations with the defendant? One thing I
5 think we actually probably would want, to the extent that the
6 FDA demanded destruction of pills that have already been
7 destroyed, those defendants would be required by the FDA to
8 create what they call the certificate of destruction.

9 And so I think if we had some, you know, (inaudible
10 4:58:01) of those certificates of destruction to the extent
11 they've said, I think that's something that would probably we
12 would be able to necessarily obtain during informal
13 discussions.

14 THE COURT: Is there any objection, Mr. Goldberg, if
15 the Court orders the defendants to produce FDA certificates of
16 destruction regarding the recalled product?

17 MR. GOLDBERG: Well I -- I was -- I was going to say
18 that plaintiffs, and I think I had said this before, plaintiffs
19 in their submission that identified a few areas of information
20 that they're seeking, and that is one of them. Then, you know,
21 I think I had mentioned this -- I think generally we're
22 comfortable --

23 THE COURT: Okay. Great.

24 MR. GOLDBERG: -- with plaintiff to provide this kind
25 of information. But I'm not sure an order's necessary,

1 because, you know, we can do this on an informal basis.

2 THE COURT: Okay. Question. Is it only recalled
3 product that was destroyed, or may be destroyed? Or is it all
4 valsartan that was manufactured, say, from a particular time
5 period, or from a particular facility, even if it wasn't
6 specifically part of a recalled lot or batch?

7 MR. GOLDBERG: Your Honor, I think this is likely
8 going to differ from defendant-to-defendant. And I think some
9 of this information is going to be, you know, captured in what
10 we would provide to plaintiffs. I mean, for some of the
11 defendants all of the -- all of the valsartan has been
12 recalled. And I -- I don't have an answer from my own
13 defendant on that specific question, but it's something we can
14 try to get to the bottom of.

15 THE COURT: So plaintiff wouldn't necessarily want
16 just -- it sounds to me, correct me if I'm wrong, Ms. Hilton,
17 but plaintiffs wouldn't necessarily want just certificates of
18 destruction of recalled product, they want certificates of
19 destruction of any valsartan product, say, after the
20 contamination was identified. Am I wrong about that?

21 MS. HILTON: No, you're not wrong, Your Honor.
22 That's correct.

23 THE COURT: Okay. So I think that's what Mr.
24 Goldberg said. So we'll leave it where the parties are going
25 to talk about this information, because we're going to insist

1 that when and if the plaintiffs file their motion to preserve
2 these pills, that they have enough information, like I said, to
3 specifically identify what it is specifically they want. And
4 through no fault of anybody right now, they don't have that
5 information. Okay?

6 Next issue, nobody has an issue with this short form
7 complaints not properly filed with MDL centrality. If we knew
8 what -- how we could help, we'll help. This is in the
9 no-brainer category. Nobody disagrees that this has to be
10 done. Is there anything the Court can do to help?

11 UNIDENTIFIED COUNSEL: Your Honor, we discussed this
12 the other day with Mr. Goldberg, and I think the fundamental
13 question we have and if it's (inaudible 5:01:57) not, you know,
14 focusing on something the Court's told us previously, then we
15 apologize. We just need to know who is involved in this to
16 talk to them and figure out what the issue is, and then
17 (inaudible 5:02:12) go and figure out some sort of an order
18 that we (inaudible 5:02:15) from people that need extensions to
19 do something.

20 It's a large issue, it's not just one (inaudible
21 5:02:24). Once we know, you know, identify who's involved and
22 what so we can talk to them in (inaudible 5:02:32) I think -- I
23 think that's the only way we can go. I just know from my
24 perspective, and I just, again, apologize, I need to know who
25 we're talking to.

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1 MR. GOLDBERG: Your Honor, this is Jeff Goldberg. We
2 had Exhibit D to Your Honor's submission. And this issue came
3 up, and we discussed it on the record back in -- on November
4 6th. And Your Honor asked for a list of all of the papers that
5 were improperly filed, and that you would issue an order
6 requiring those to be re-filed properly, or dismissed.

7 And so -- and you asked us to provide a list. We
8 tried to do that with Exhibit D and think we've got everything.
9 So --

10 THE COURT: We'll take care of it.

11 MR. GOLDBERG: I think you could use that as a way to
12 reach out to --

13 THE COURT: Yeah.

14 MR. GOLDBERG: -- your colleagues on the plaintiffs
15 side.

16 UNIDENTIFIED COUNSEL: Okay.

17 THE COURT: Now --

18 UNIDENTIFIED COUNSEL: That's fine. I didn't realize
19 that it was attached. I remember we spoke the other day. You
20 were still trying to figure out the last (inaudible 5:03:41).
21 And neither of us could remember what happened, so I'm just
22 somehow you figured it out and attached it. No problem.

23 THE COURT: Okay.

24 UNIDENTIFIED COUNSEL: We'll address it tomorrow.

25 THE COURT: And we'll take care of that order, Mr.

1 Goldberg. I -- I think you're right. But what does -- I'm
2 looking at page three of Exhibit D. What is the list of
3 plaintiffs who failed to file a timely short form complaint?

4 Do we have to do anything with regard to that?

5 UNIDENTIFIED COUNSEL: This is the same thing. I was
6 just waiting for who was involved, and then, you know, reach
7 out to them --

8 THE COURT: Oh, I see.

9 UNIDENTIFIED COUNSEL: -- (inaudible 5:04:24) at
10 least can be done.

11 THE COURT: You mean -- oh, they filed a long form
12 complaint, but not a short form complaint?

13 UNIDENTIFIED COUNSEL: Correct.

14 THE COURT: Okay. Fair enough. We'll take care --

15 MR. NIGH: Your Honor, this is Daniel Nigh. If I
16 could interject just briefly. We had this kind of issue in
17 Benicar. They're actually called improvidently filed cases.
18 Or improvident -- there was a terminology for this. All we did
19 was we put them, just like the deficiencies of the PFX, we
20 would list them each month in a Court agenda, and if it was
21 listed in there twice, then -- then that would open up an order
22 to show cause (inaudible 5:05:01) you started, and it's just
23 the same process.

24 It sounds like that would be effective for this same
25 issue as well. That's something we can talk about --

1 THE COURT: Okay.

2 MR. NIGH: -- but that would probably (inaudible
3 5:05:11) part of the issue.

4 THE COURT: Well I'll tell you what, Mr. Nigh, I'll -
5 - I'll issue this order, and if it's ignored then we'll go to
6 the order to show cause procedure for this --

7 MR. NIGH: Okay.

8 THE COURT: -- issue. Okay?

9 MR. NIGH: Sounds good.

10 THE COURT: Okay. That should take care of that. I
11 think these people just need to be woken up. Plaintiffs motion
12 for extension of time. It's just an issue that it's like a bad
13 toothache, it just won't go away. There's like 25 or 30
14 motions on the Docket. Probably they don't need to be there.
15 By inclination, if it can't be worked out was to order the firm
16 to appear at the end of the month and find out why -- why they
17 had to file 30 motions when nobody else filed them.

18 So --

19 UNIDENTIFIED COUNSEL: I was going to ask you, Mr.
20 Goldberg, has he -- the parties have been contacting defense
21 counsel to ask for a consent, or are we just filing motions?

22 MR. GOLDBERG: I don't think anyone on the defense
23 side has been contacted (inaudible 5:06:23).

24 THE COURT: They came in as one -- they came in as
25 one fell swoop. And after that barrage, we haven't seen any.

1 So I'm going to order Mr. Golden to be here at the end of the
2 month. Hopefully, we'll get a letter saying the issue's worked
3 out, get rid of all the motions, terminate them, so he doesn't
4 have to come to Camden to explain what's going on.

5 UNIDENTIFIED COUNSEL: Yeah.

6 THE COURT: Number seven. Status of defendant's
7 ongoing core discovery. Plaintiffs, do you want to talk about
8 this?

9 MS. HILTON: Sure, Your Honor. Layne Hilton on
10 behalf of the plaintiff. I think our issue here is, you know,
11 in essence two-fold. The first issue is that plaintiff has
12 identified that some defendants have appointed third-parties to
13 be registered U.S. agents and -- and to communicate with the
14 FDA on behalf of the company.

15 And we have confirmed that, (a) we're not receiving
16 communications of course on (inaudible 5:07:29). And, (b) I
17 think we sort want some clarity as to whether we're going to
18 have to subpoena those third-party entities, or whether
19 defendants are going to producing those communications and
20 correspondence's pursuant to the Court's core discovery order.

21 And I think that for the second issue was that in the
22 context of our, for an investigation into the (inaudible
23 5:07:51) issue, we realize that we were likely missing some
24 correspondence with the FDA regarding the recall as it related
25 to the destruction of pills, specifically the fact that we

1 didn't have any certificates of destruction, et cetera, et
2 cetera.

3 And we are of the belief that those communications
4 and correspondence's were to be provided to us on an ongoing
5 basis pursuant to the Court's order.

6 THE COURT: I guess we ought to clarify. And I
7 looked at the order, it was certainly the intent of the order
8 that it wouldn't just apply to the named defendants, but anyone
9 acting on their behalf. Albeit it didn't say that in so many
10 words.

11 If the defendants are taking the position that if
12 they have a third-party agent who's corresponding on their
13 behalf to the FDA, or separate law firm that's corresponding
14 with the FDA, if that's not included within the scope of the
15 Court's order, I'll clarify the order to make it clear that
16 that's what the Court intended the order to mean.

17 The intent of the order is just -- these are public
18 documents going to the FDA. The plaintiff is entitled to a
19 copy of them. We do it in patent cases, and there's no reason
20 not to do it in this case. So I -- I guess the question
21 presented to the defendants is, are they taking the position
22 that, say, for example, defendant X, Y, Z is not sending the
23 letter, but a third-party agent of X, Y, Z is sending the
24 letter that that doesn't have to be produced.

25 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I

1 think -- I think it would be helpful if we could have the
2 opportunity to talk to the other defendants on that specific
3 question. You know, I -- I know that at least with respect to
4 DH (inaudible 5:10:18) we have a consultant or two that are --
5 that -- that communicated with the FDA, I believe, and as
6 plaintiffs have pointed out, on one or two occasions Duane
7 Morris has communicated with the FDA.

8 I don't know that the defendants are taking the
9 position that that information isn't in their possession and
10 custody or control, or that they can't -- they are not going to
11 produce that information. But I think it would be helpful -- I
12 do not have -- I can't make the representation on behalf of the
13 other defendants, and I don't know the -- the scope of this
14 information either. The volume.

15 THE COURT: Okay. Well I would ask plaintiffs to
16 keep this issue on your radar screen. It's a very, very
17 important issue in the case. You're entitled to those FDA
18 communications. They're public documents. They're not
19 privileged. And they're clearly relevant to the case. So put
20 it on your radar screen, continue discussions with Mr. Goldberg
21 and defendants.

22 In terms of the timeliness of the production, I would
23 like -- the Court would like to be kept up-to-date on this.
24 You will know by the dates of the letters you receive and
25 emails you receive whether or not the production to plaintiffs

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1 is timely or not.

2 If an email is dated today and you don't get a copy
3 of it for six months, that's not in compliance with the Court
4 order. And I want to know about that, because the order says
5 that the communications with the FDA have to be produced, I
6 don't have the order in front of me, but I think it was, what,
7 seven days, within seven days?

8 UNIDENTIFIED COUNSEL: Yes, Your Honor.

9 THE COURT: And if you get -- if you get letters and
10 emails that are months later, that's unacceptable. So you're
11 in the best position to know whether the order is being
12 complied with with regard to the timeliness issue. And
13 continue your discussions with the defendants about, you know,
14 this issue about third-party agency consultants. Clearly,
15 unless the sky falls in, how can a defendant argue that it's a
16 document within the possession of its law firm, or its
17 consultant, or agent is not within it's care, custody or
18 control?

19 You know that -- on the face of it, that argument
20 makes no sense. So it's an important issue, and I'm asking --
21 it's an important issue and I'm asking you to stay on top of it
22 and keep the Court updated, okay?

23 UNIDENTIFIED COUNSEL: We will, Your Honor.

24 THE COURT: If we have to -- if we have to issue
25 orders requiring productions every two weeks with the

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1 representation there are no responsive documents, we'll do it.
2 I don't want to do it. That's the last thing in the world I
3 want to do is create more work. But this order has to be
4 complied with. Okay?

5 The testing issue. Let me cut to the chase, because
6 it's getting late. Plaintiffs, I don't know why it's
7 unacceptable if the defendants give you the Bates numbers where
8 the tests are listed, why that's not acceptable to you.

9 In an answer to interrogatory, you can give the Bates
10 number of a document that has the responsive information. It
11 doesn't sound like plaintiffs are -- defendants are doing a
12 document dump. They're referring you to the specific documents
13 that have the information you want.

14 It seems to the Court that that should be enough,
15 that they don't have to then go to the effort of preparing a
16 separate list. Is there something I'm missing, plaintiffs?

17 MR. STANOCH: Your Honor, this is David Stanoch.
18 Briefly on this, Your Honor, the references are to the -- the
19 high level generic ANDA documents. They have 30 pages here,
20 but one defendant only takes (inaudible 5:14:50) for another
21 defendant. And we wanted them to identify the types and
22 purposes of the test.

23 So they're simply saying, here's the Bates number,
24 good luck. That makes it very difficult. And then when we get
25 to those pages if we think we found what we wanted, it's --

1 it's only the highest level for the ANDA. For example, if you
2 do a chromatography test, you know, there's over a dozen types.
3 And there's at least two different machines that you can them
4 with, and there's two different detectors that you can have on
5 each machine.

6 And that's the detail that's going to move things
7 along for us and our expert, not looking at the most basic set
8 of high version of the ANDA file about what might be done
9 versus what the test they're actually doing and the specifics
10 of the machines and (inaudible 5:15:31) that they were using
11 for it.

12 THE COURT: The defendants have represented that the
13 Bates numbers that they've given you identify the tests that
14 they do. Are they not correct?

15 MR. STANOCH: They are generic references to some
16 types of tests they do, such as absorbent, or condition, or
17 (inaudible 5:15:56). And, you know, they're -- Judge, there
18 are 11 different types of chromatography tests at least. There
19 are at least two different machines codes that you do
20 chromatography tests with. There's at least two different
21 differentiator's you use for each machine.

22 That's the kind of detail that we believe we can't
23 find in there and that why this strictly having the list like
24 you ordered should cut through all this.

25 THE COURT: Okay. Why don't you then look through

1 the documents that the defendants identified. And if you feel
2 that there's specifics that are missing, why don't you meet and
3 confer with the defendant about what you specifically need, and
4 then they'll respond to it. Rather than requiring them to
5 prepare a whole separate list, which at least they say is
6 duplicative of what's in the documents. Okay?

7 MR. STANOCH: We'll do that, Your Honor. Thank you.

8 THE COURT: Okay. The last issue in the letter was
9 the Legacy issue, which we dealt with. But there was one issue
10 that I wanted to raise. And this is sort of the Court's pet
11 peeve. And we mentioned it before, these confidentiality
12 designations. Plaintiff, I've said this before, and you hinted
13 at it in your letter. If you believe that the designations
14 that the defendants make are improper, and it's important,
15 raise it with the Court.

16 Because that's unacceptable, it's just unacceptable
17 to just willy -- I'm not saying they're doing this, but it's
18 unacceptable to willy-nilly designate these documents. In your
19 letter brief, you alluded to that. If you think any of the
20 documents that you refer to in your letter brief don't deserve
21 a confidentiality designation, raise it for the next conference
22 at the end of the month. Send me the documents to review in
23 camera, and I'll decide.

24 We're not going to have instances in this case where
25 there's over-designations, simply because that's the way people

1 usually do things. If a document is confidential genuinely,
2 it's going to be confidential, it's going to be sealed. But --
3 but just because a company doesn't want a document to be
4 circulated in the public, doesn't necessarily make it
5 confidential or sealable.

6 That's all I have to say about that issue. Okay? So
7 I leave it in plaintiffs' very capable hands whether they think
8 it's important enough to raise the issue with the Court. And
9 if so, just put it on the agenda for the next conference. So
10 that takes us through the letters. For the good of the order,
11 are there any other issues that anybody else wants to raise?
12 I'll try and confirm whatever we've talked about in an order to
13 be timely entered.

14 Any other issues anybody wants to raise?

15 MR. GOLDBERG: None from defendants, Your Honor.

16 MR. SLATER: Nothing for the plaintiffs, Your Honor.
17 Thank you very much.

18 THE COURT: Okay. Hearing none, we're -- we'll have
19 the morning and afternoon meetings at the end of the month.
20 Judge Kugler will be here. So at a minimum, we'll address with
21 him the -- the two sartan issues, and whatever else comes up.
22 Thank you, counsel. Have a good day. And we're adjourned.

23 (Proceedings concluded at 5:19 p.m.)

24 * * * * *

25 C E R T I F I C A T I O N

1 I, Josette Jones, court approved transcriber, certify that the
2 foregoing is a correct transcript from the official digital
3 audio recording of the proceedings in the above-entitled
4 matter.

5
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